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Attorney for Petitioner  
Screen Actors Guild - American Federation  
of Television and Radio Artists

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SCREEN ACTORS GUILD-  
AMERICAN FEDERATION OF  
TELEVISION AND RADIO  
ARTISTS, a non-profit corporation, as  
successor-in-interest to SCREEN  
ACTORS GUILD, INC., on behalf of  
Affected Performers,

Petitioner,

v.

SHADOWBOXER, LLC; LEE  
DANIELS ENTERTAINMENT,  
LTD.,

Respondent.

Case No. 2:15-cv-09463

**NOTICE OF MOTION AND  
MOTION FOR ORDER  
CONFIRMING ARBITRATION  
AWARD AND FOR ENTRY OF  
JUDGMENT IN CONFORMITY  
THEREWITH; MEMORANDUM OF  
POINTS AND AUTHORITIES; AND  
DECLARATION OF JESSICA  
ESPINOSA IN SUPPORT THEREOF**

Date:  
Time:  
Place:  
Judge:

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on \_\_\_\_\_,  
2016, at \_\_\_\_\_ a.m./p.m., or as soon as this matter may be heard, petitioner  
Screen Actors Guild-American Federation of Television and Radio Artists ("SAG-  
AFTRA" or "Union"), as successor-in-interest to Screen Actors Guild, Inc., will  
move, and hereby does move, the United States District Court, located in  
Courtroom \_\_\_\_\_ at \_\_\_\_\_, Los Angeles,

1 California, for an Order that:

- 2 1. Confirms the Arbitration Award in favor of Union and against  
3 Respondents SHADOWBOXER, LLC and LEE DANIELS  
4 ENTERTAINMENT, LTD. ("Respondents"), Union Case No. TM  
5 4752, dated December 8, 2011 ("Arbitration Award"), in all respects;
- 6 2. Enters judgment in conformity therewith;
- 7 3. Awards Union attorney's fees and costs;
- 8 4. Awards such other and further relief as the Court deems just and  
9 proper.

10 This motion is made pursuant to a collective bargaining agreement by which  
11 Union obtained the Arbitration Award against Respondent and which expressly  
12 provides that the Arbitration Award may be confirmed by the present Court.

13 This Court's jurisdiction arises under section 301(a) of the Labor  
14 Management Relations Act of 1947 (29 USC § 185(a)), as amended, which grants  
15 the District Court original jurisdiction over actions relating to violations of  
16 collective bargaining agreements between an employer and a labor organization in  
17 an industry affecting interstate commerce, without regard to the amount in  
18 controversy or the citizenship of the parties.

19 Venue is proper in the Central District of California because the Arbitration  
20 Award was issued in this district.

21 This motion is based upon this Notice of Motion and Motion as well as the  
22 attached Memorandum of Points and Authorities, Declaration of Jessica Espinosa,  
23 all pleadings and papers on file, and upon such further oral or documentary  
24 evidence that may be presented at the time of hearing.

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1 Pursuant to Local Rule 7-3, Union attempted to meet and confer with  
2 Respondent on November 25, 2015 and sent a Meet and Confer Letter on  
3 November 30, 2015. Respondent has not responded. Union informed Respondent  
4 that Union would file the present motion.

5 Dated: December 8, 2015

Respectfully Submitted,

6 SCREEN ACTORS GUILD-  
7 AMERICAN FEDERATION OF  
8 TELEVISION AND RADIO ARTISTS

9 By: /s/  
10 JESSICA ESPINOSA  
11 Attorney for Petitioner  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

Petitioner Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA” or “Union”), as successor-in-interest to Screen Actors Guild, Inc. (“SAG”), respectfully submits the following Points and Authorities in support of its motion to confirm an arbitration award and enter a corresponding judgment.

### **I. STATEMENT OF FACTS**

#### **A. The Parties and Underlying Dispute**

Union is the successor-in-interest to SAG and is a union that represents approximately 160,000 media artists who work in motion pictures, television, radio, the internet, and other media formats. (Declaration of Jessica Espinosa (“Espinosa Decl.”), ¶ 3). Respondent, SHADOWBOXER, LLC (“Respondent” or “Producer”) executed a Screen Actors Guild Theatrical Adherence Letter (“Adherence Letter”) dated November 11, 2004 agreeing to be bound by the Screen Actors Guild Codified Basic Agreement of 1995 for Independent Producers, the 1998 Memorandum of Agreement, the 2001 Memorandum of Agreement, the 2001 Screen Actors Guild Extension Agreement (collectively “CBA”). (Espinosa Decl., ¶ 4, Exhibit A). On or about April 20, 2004, Respondent also executed a Security Agreement. (Espinosa Decl., ¶ 5, Exhibit B). Respondent, LEE DANIELS ENTERTAINMENT, LTD. (“LDE”) executed a Guaranty Agreement to guarantee the performance of SHADOWBOXER, LLC, of all the terms and obligations under the CBA. (Espinosa Decl. ¶ 6, Exhibit C).

During the term of the CBA, Respondents produced the motion picture entitled, “*Shadowboxer*” the “Picture”). (Espinosa Decl., ¶ 7).

Among other things the Adherence Letter, Security Agreement, and

1 Guaranty Agreement binds Respondents to the terms and conditions of a collective  
 2 bargaining agreement: Screen Actors Guild Codified Basic Agreement of 1995 for  
 3 Independent Producers, the 1998 Memorandum of Agreement, the 2001  
 4 Memorandum of Agreement, the 2001 Screen Actors Guild Extension Agreement  
 5 (collectively “CBA”). (Espinosa Decl., ¶ 8). A true and correct copy of the  
 6 relevant portions of the CBA are attached to the Declaration of Jessica Espinosa as  
 7 Exhibit D.<sup>1</sup>

8 Pursuant to the terms of the CBA Respondent produced the Picture using  
 9 Union actors or other performers covered by said agreement (collectively  
 10 “Performers”). (Espinosa Decl., ¶ 9).

11 Respondent distributed the Picture on Free Television, Pay Television, and  
 12 Videocassette/DVD, but failed to make required reports or pay residuals as  
 13 required by Sections 5 and 5.2 of the CBA. (Espinosa Decl., ¶¶ 10-11). Pension  
 14 and health contributions also became due to performers under Section 34 of the  
 15 CBA. (Espinosa Decl., ¶ 12-13).

16 As Respondent failed or refused to pay the residuals due to Performers, late  
 17 payment liquidated damages (“LPLDs”) also became due pursuant to Section 31.B  
 18 the CBA. (Espinosa Decl., ¶ 14, Exhibit D).

19  
 20 B. Union Obtains Stipulated Arbitration Award Against Producer

21 On or about July 8, 2008, pursuant to Section 9.E, of the CBA, Union served  
 22 a statement of Claim and Request for Conciliation on Respondents for Delinquent  
 23 Residuals and Reporting. (Espinosa Decl., ¶ 15, Exhibit E). Subsequently, on or  
 24 about May 7, 2009 pursuant to Section 9.E(3), of the CBA, the Union served a  
 25 Statement of Claim and Demand for Arbitration (“Demand”) on Respondents for  
 26 failure to pay residual compensation, pension and health contributions, and LPLDs

27  
 28 <sup>1</sup> As the CBA is 617 pages in length, only the Table of Contents and relevant portions of the document have been attached.

1 due. (Espinosa Decl., ¶ 16, Exhibit F).

2 Said statements of claim and demands for arbitration were served in  
3 accordance with the notice provision, Sections 9.E(3) and 42 of the CBA.  
4 (Espinosa Decl., ¶ 17). Union unilaterally selected Arbitrator Michael D.  
5 Rappaport to preside over the arbitration pursuant to Section 9 of the CBA, after  
6 Respondent provided no response to the Demand. (Espinosa Decl., ¶ 18, Exhibit  
7 G).

8 An arbitration hearing was held on December 8, 2011. Respondent did not  
9 appear at the hearing. Consequently, Arbitrator Michael D. Rappaport issued an  
10 arbitration award (“Arbitration Award”) on December 8, 2011, in favor of Union  
11 and against Respondent. (Espinosa Decl., ¶ 19). A true and correct copy of the  
12 Arbitration Award is attached to the Declaration of Jessica Espinosa as Exhibit H.  
13 The Arbitration Award provides the following relief:

14 “Shadowboxer, LLC a (‘Producer’) and Lee Daniels Entertainment, LTD.  
15 (‘LDE’) are in breach of the CBA. Producer and LDE are hereby ordered to  
16 pay to Screen Actors Guild, Inc. on behalf of affected performers, with joint  
17 and several liability, the residuals due to performers appearing in the Picture,  
18 late payment liquidated damages (“LPLD’s”), pension and health  
19 contributions (“P&H”), and an estimate of employer-side taxes and payroll  
20 house expenses totaling **\$335,757.11** which consists of: Residuals:  
21 \$169,630.22; P&H: \$25, 323.03; LPLD’s: \$93,544.08; Taxes/Expenses  
22 (17.95%): \$47,239.79; **Grand Total: \$335,737.11.**” (Espinosa Decl., ¶ 19-  
23 20, Exhibit H).

24 Despite Union’s demand, Respondent has failed and continues to fail to pay  
25 Union the total amount of **\$335,737.11** as required by the Arbitration Award and to  
26 otherwise comply with the Arbitration Award. (Espinosa Decl., ¶¶ 21-23).

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C. Union Presently Seeks Confirmation of the Arbitration Award, Entry of Judgment, and Attorney's Fees and Costs

1. Union hereby seeks an order from this Court confirming the Arbitration Award. Union also requests that judgment be entered in conformity with the Arbitration Award and include an additional award of attorney's fees and costs. Pursuant to Local Rule 7-3, on November 25, 2015, Union attempted to contact Producer via last known telephone provided to the Union. Producer telephone number was out of service. (Espinosa Decl., ¶ 24). Subsequently, Union sent meet and confer letter to Respondents on November 30, 2015, stating that Union would proceed to confirm the Arbitration Award as a judgment. (Espinosa Decl., ¶ 25, Exhibit I).

## II. LAW AND ARGUMENT

A. This Court Is Empowered To Confirm the Arbitration Award.

The District Courts are empowered to enforce arbitration awards issued in accordance with a collective bargaining agreement. *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 597, 80 S.Ct. 1358, 4 L.Ed. 2d 1424 (1960). The Arbitration Award in favor of Union was awarded pursuant to the Screen Actors Guild Codified Basic Agreement of 1995 for Independent Producers, the 1998 Memorandum of Agreement, the 2001 Memorandum of Agreement, the 2001 Screen Actors Guild Extension Agreement (collectively "CBA"). (Espinosa Decl., ¶ 8, Exh. D). Section 9.G of the CBA provides that this Award may be confirmed in federal court. (Espinosa Decl., ¶ 8, Exh. D) Accordingly, this Court is empowered to confirm and enforce the Award.

B. An Arbitration Award Must Be Confirmed If It Draws Its Essence From the Collective Bargaining Agreement.

Under the *United Steelworkers* trilogy of cases, the Court will not review the



substantive merit of an arbitration award made in accordance with a collective bargaining agreement. *See United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d. 1409 (1960); *United Steelworkers v. Enterprise Wheel and Car Co.*, *supra*. Instead, the Court will defer to the arbitrator's legal and factual determinations. *American Postal Workers' Union AFL-CIO v. United States Postal Service*, 682 F.2d 1280, 1284 (9th Cir. 1982), *cert. denied*, 459 U.S. 1200, 103 S.Ct. 1183, 75 L.Ed.2d 431 (1983). “[J]udicial review of an arbitration award [Under Section 301] is both limited and highly deferential [...] the court may not review the merits, but must ask only whether the grievance is governed by the contract and whether the parties agreed to arbitrate the dispute.” *Sheet Metal Workers’ Int’l Ass’n Local No. 359 v. Madison Indus., Inc., of Ariz.*, 84 F.3d 1186, 1190 (9<sup>th</sup> Cir. 1996). In this case, the Union satisfies the requirements for the enforcement of the arbitration award.

1. The Parties Agreed to Arbitrate the Underlying Grievance

Respondent agreed to be bound to the CBA. Respondent signed an Adherence Letter on November 11, 2004, binding Respondent to the CBA. (Espinosa Decl. ¶ 4, Exh. A). By signing the Theatrical Adherence Letter Producer explicitly agreed to abide by all the terms of the CBA:

“The undersigned Producer hereby acknowledges receipt of the Screen Actors Guild Codified Basic Agreement of 1995 for Independent Producers, the 1998 Memorandum of Agreement, the 2001 Memorandum of Agreement and the 2001 Acreen actors Guild Extension Agreement[...] which sets forth the terms and working conditions for performers and background actors[...] by executing this letter, the undersigned Producer and Screen Actors Guild [...] shall be deemed to have executed said Agreement.” (Espinosa Decl., ¶ 5, Exh. A, p. 1).

Similarly, LDE agreed to guarantee the performance by Shadowboxer, LLC



of all the terms and conditions under the CBA, specifically:

“This agreement and unconditional guaranty (the “Guaranty”) is made by Lee Daniels Entertainment, Ltd. (“Guarantor”) for the benefit of the Screen Actors Guild, Inc. (“SAG” or “Guild”) in order to guarantee the performance by Shadowboxer, LLC (hereinafter, “Producer”) of all the terms and obligations under the Screen Actors Guild Codified Basic Agreement of 1995 for Independent Producers, as amended by the 1998 Memorandum of Agreement, the 2001 Memorandum of Agreement [...] relating to the motion picture entitled “Shadowboxer” ... including, but not limited to, the following obligations: (a) to pay additional compensation required under the Basic Agreement which becomes due to such Performers when the Picture is distributed, exhibited, or otherwise exploited (hereinafter “Residuals”); (d) to pay pension, health, and welfare contribution for the benefit of the Performers employed in the making of the Picture; (e) to satisfy any arbitration award obtained against Producer relating to the Picture pursuant to the applicable provision of the Basic Agreement...” (Espinosa Decl., ¶ 6, Exh. C, p. 1).

## 2. The CBA Contains An Explicit Agreement to Arbitrate The Underlying Grievance

Section 9.C(1) of the CBA specifically states that disputes regarding compensation of performers, and all other disputes arising under the applicable terms of the collective bargaining agreement are arbitrable:

### 9. ARBITRATION

Disputes shall be arbitrable only as hereinafter in this Section set forth [...]

#### C. Individual Disputes between Performer and Producer

Subject to the provisions of subsections A. and B. above **only the following disputes between a performer and Producer are arbitrable:**

**(1) As to a day performer**, stunt performer, stunt coordinator, airplane pilot, singer, dancer employed on a theatrical motion picture, puppeteer, body double or either a freelance performer or a multiple-picture performer whose guaranteed compensation is less than \$50,000 per picture, the issue of whether a contract was entered into and any dispute involving the interpretation, performance, non-performance or an alleged breach of a term or condition of the performer's contract, **including claims for compensation**

1 **at scale or overscale, and all disputes arising under the applicable terms**  
 2 **of the collective bargaining agreement relating to such performer;**  
 3 (Espinosa Decl., ¶ 8, Exh. D, p. 47, *emphasis added*).

4 Similarly, the Guaranty Agreement executed by LDE states that all disputes  
 5 are arbitrable,

6 “Each party agrees that all disputes based upon, arising out of or relating in  
 7 any way directly or indirectly to, this Guaranty Agreement shall be submitted  
 8 to arbitration in accordance with the arbitration provisions of the SAG Basic  
 9 Agreement (...).” (Espinosa Decl., ¶ 6, Exh. C, p. 3).

10 C. The Underlying Grievance Is Covered by the Collective Bargaining  
 11 Agreement

12 The CBA sets forth the minimum wage scales and working conditions for all  
 13 performers employed in television motion pictures. The topics covered by the  
 14 CBA are therefore “arising under” and include, but are not limited to,  
 15 compensation for performers, contributions to the Screen Actors Guild Pension and  
 16 Health Plans (“P & H”) by Producers on behalf of performers, and late payment  
 17 liquated damages for failure to pay outstanding amounts.

18 1. Respondents Did Not Pay Performers Agreed Upon Compensation

19 Respondent agreed to arbitrate over compensation as evidenced by the plain  
 20 language in the CBA arbitration provision cited above. Specifically, in this case,  
 21 Respondent violated terms of Sections 5 and 5.2 by not paying performers residual  
 22 compensation, and therefore Arbitrator Rappaport found, “The Picture has been  
 23 released and exploited in free television, pay television and videocassette/DVD and  
 24 there had been no reporting or payment of residuals or pension and health  
 25 contributions as required by the CBA.” (Espinosa Decl., ¶ 19, Exh. H, p. 2, ¶ 7).

26 2. Respondents Did Not Pay Agreed Upon Pension and Health  
 27 Contributions

28 Respondent also did not pay performers their due Pension and Health  
 contributions as required by Section 34.A of the CBA. (Espinosa Decl., ¶¶ 8, 12-

13; Exh. D, pp. 86-94). Respondent failed to both pay residual compensation and pension and health contributions.

### 3. Respondents Failed to Pay Late Payment Liquidated Damages

Section 31(B) of the CBA mandates that Respondent will be charged an additional late payment when he or she fails to pay performers due compensation.

#### (B) Late Payments

[...] **(2) There shall be a \$10 per day performer late payment charge, excluding Saturday, Sunday, and holidays, for late payment applicable to all Schedules from time payment becomes due** (excluding bona fide emergencies of which the Union shall be give prompt notice within the time specified for payment hereunder), for a period not to exceed twenty (20) days, excluding Saturdays, Sundays and holidays, to a maximum \$200 per violation.

[...] **In the event payment is not made within said five (5) day period of the entire amount due, further late payment charges in the amount of \$2.50 per day retroactive to the date of receipt of notice of non-payment shall be due and shall continue to accrue without limitation until the delinquent payment, together with the late payment charges, is fully paid.** (Espinosa Decl., ¶ 8, Exh D, pp. 84-85, *emphasis added*.)

Respondents explicitly agreed to arbitrate issues of compensation, contributions to pension and health plans, and late payment liquated damages as evidenced by the arbitration provisions and contractual provisions in the CBA that govern these subjects. The Arbitration Award found that LDE is a signatory to a Guaranty Agreement securing all of the Producer's obligations to the Guild, including payment of residuals. (Espinosa Decl., ¶ 6, Exh. C, p. 2). The Arbitration Award was awarded in favor of the Union, due to multiple violations, by Respondents, of the collective bargaining agreements. The Arbitration Award states, "Producer and LDE are hereby ordered to pay to the Screen Actors Guild, Inc., on behalf of affected perfomers, with joint and several liability, the residuals due to the performers appearing in the Picture, late payment damages ("LPLDs"), pension and health contributions ("P&H"), and an estimate of employer-side taxes

1 and payroll house expenses . . . .” (Espinosa Decl., ¶ 20, Exh. H, p. 2). Therefore,  
 2 Respondent agreed to arbitrate the underlying grievance and gave the arbitrator the  
 3 power to make the award given, fulfilling the requirements for this Court to enforce  
 4 the arbitration award as set forth in *Sheet Metal Workers’ Int’l Ass’n Local No. 359*  
 5 *v. Madison Indus., Inc., of Ariz.*, 84 F.3d 1186, at 1190.

6 D. The Present Arbitration Award Should Be Confirmed Because the Arbitrator  
 7 Found That Respondents Breached Its Obligations To Union.

8 In the current case, the Arbitrator applied to the facts the relevant provisions  
 9 of the CBA, finding that Respondent breached its obligations under said  
 10 agreements, and awarded monetary and other relief in favor of Union and against  
 11 Respondents. (Espinosa Decl., ¶ 20, Exh. H). As a matter of public policy and in  
 12 the interest of the stability of labor relations, as well as in accordance with  
 13 Congress' intent as interpreted by the U.S. Supreme Court, the Low Budget  
 14 Agreement, the CBA, and the Arbitration Award must be enforced. Accordingly,  
 15 the Arbitration Award should be confirmed and judgment entered in conformity  
 16 therewith. *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, at  
 17 564.

18 E. Petitioner Union Should Be Awarded Its Attorney's Fees and Costs.

19 Attorney's fees may be recovered in an action brought under Section 301 of  
 20 the LMRA (29 U.S.C. §185) where a party without justification refuses to abide by  
 21 the arbitration award. *International Union of Petroleum and Industrial Workers v.*  
 22 *Western Industrial Maintenance, Inc.*, 707 F.2d 425, 428 (9th Cir. 1983); see also  
 23 *UAW v. United Farm Tools, Inc.*, 762 F.2d 76, 77 (8th Cir. 1985) (unjustified  
 24 refusal to abide by arbitration award, combined with failure to act to set aside  
 25 award, is evidence of bad faith sufficient to warrant attorney's fees).

26 Respondent has not asserted or demonstrated any legal justification for  
 27 failing to comply with the Arbitration Award. Instead, Respondent has forced the  
 28

1 Union to initiate this action in Federal Court to confirm and enforce the Arbitration  
2 Award. Considering the prevailing rate for attorney's fees, as well as the estimated  
3 8 hours that Union's attorney worked or will have worked in preparing the present  
4 motion and supporting documents as well as court appearance time, Union  
5 respectfully requests that this Court award attorney's fees in the amount of  
6 \$2,400.00 and costs in the amount of \$400.00 as set forth in the accompanying  
7 declaration. (Espinosa Decl., ¶¶ 26-33.)

### 8 9 **III. CONCLUSION**

10 For the foregoing reasons, petitioner Screen Actors Guild-American  
11 Federation of Television and Radio Artists requests that the Court confirm the  
12 Arbitration Award, enter judgment in conformity therewith, and award attorney's  
13 fees to SAG-AFTRA in the amount of \$2,400.00 and costs in the amount of  
14 \$400.00.

15  
16 Dated: December 8, 2015

Respectfully Submitted,

17  
18 SCREEN ACTORS GUILD-  
19 AMERICAN FEDERATION OF  
20 TELEVISION AND RADIO ARTISTS

21 By:                     /s/                      
22 Jessica Espinosa  
23 Attorney for Petitioner  
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**DECLARATION OF JESSICA ESPINOSA**

I, JESSICA ESPINOSA declare as follows:

1. I am an attorney licensed to practice law in the State of California and admitted to this Court. I am the attorney of record for petitioner Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA” or “Union”), as successor-in-interest to Screen Actors Guild, Inc. (“SAG”), in this matter.

2. This Declaration is submitted in support of Union's motion for order confirming arbitration award and for entry of judgment in conformity therewith. I prepared the foregoing motion. The allegations contained in the motion are true to the best of my knowledge, except those that are stated on information and belief. As to those matters, I believe them to be true.

3. SAG-AFTRA is the successor-in-interest to SAG and is a union that represents approximately 160,000 media artists who work in motion pictures, television, radio, the internet, and other media formats.

4. Respondent SHADOWBOXER, LLC executed a Screen Actors Guild Theatrical Adherence Letter (“Adherence Letter”) dated November 11, 2004, agreeing to be bound by the Screen Actors Guild Codified Basic Agreement of 1995 for Independent Producers, the 1998 Memorandum of Agreement, the 2001 Memorandum of Agreement, the 2001 Screen Actors Guild Extension Agreement (collectively “CBA”). A true and correct copy of the executed Adherence Letter is attached hereto as Exhibit A.

5. Producer also executed a Security Agreement on April 20, 2004. A true and correct copy of the Security Agreement is attached hereto as Exhibit B.

6. Respondent, LEE DANIELS ENTERTAINMENT, LTD (“LDE”) executed a Guaranty Agreement to guarantee the performance of Producer, of all the terms and obligations under the CBA. A true and correct copy of the Guaranty Agreement is attached hereto as Exhibit C.

1           7.     During the term of the CBA, Respondent produced the motion picture  
2     entitled, "*Shadowboxer*" ("the Picture").

3           8.     Among other things, the Adherence Letter, Security Agreement, and  
4     Guaranty Agreement bind Producer and LDE to the terms and conditions of a  
5     collective bargaining agreement: the Screen Actors Guild Codified Basic  
6     Agreement of 1995 for Independent Producers, the 1998 Memorandum of  
7     Agreement, the 2001 Memorandum of Agreement, the 2001 Screen Actors Guild  
8     Extension Agreement (collectively "CBA") A true and correct copy of the relevant  
9     portions of the CBA are attached hereto as Exhibit D.<sup>1</sup>

10          9.     Pursuant to the terms of the CBA, Respondent produced the Picture  
11     using Union actors or other performers covered by said agreements (collectively  
12     "Performers").

13          10.    Respondent distributed the Picture in Free Television, Pay Television,  
14     and Videocassette/DVD.

15          11.    As a result, Respondent became obligated to pay Performers  
16     additional residual compensation as outlined in Sections 5 and 5.2 of the CBA.

17          12.    Additionally, pension and health contributions ("P & H") became due  
18     and payable on behalf of Performers pursuant to Section 34 of the CBA.

19          13.    Respondent failed or refused to pay residual payments due to  
20     Performers and corresponding P & H contributions on performer's behalf.

21          14.    Because Respondent failed or refused to pay the salary upgrades due  
22     to Performers, late payment liquidated damages ("LPLDs") also became due  
23     pursuant to Section 31.B of the CBA.

24          15.    On or about July 8, 2008, pursuant to Section 9.E, of the CBA, Union  
25     served a statement of Claim and Request for Conciliation on Respondent for  
26     Delinquent Residuals and Reporting. A true and correct copy of Claim and Request  
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28     <sup>1</sup> Because the CBA is 617 pages in length, only the Table of Contents and relevant portions of the document have  
   been attached.



1 for Conciliation is attached hereto as Exhibit E.

2 16. On or about May 7, 2009, pursuant to the arbitration provisions,  
3 Sections 9.E(3) and 42 of the CBA, Union served a Statement of Claim and  
4 Demand for Arbitration (“Demand”) on Respondent for failure to pay residuals  
5 compensation, pension and health contributions, and LPLDs due. A true and  
6 correct copy of the Statement of Claim and Demand for Arbitration is attached  
7 hereto as Exhibit F.

8 17. Said statements of claim and demands for arbitration were served in  
9 accordance with the notice provisions of the CBA, Sections 9.E(3) and 42.

10 18. Union unilaterally selected arbitrator Michael D. Rappaport to preside  
11 over the arbitration pursuant to Section 9 of the CBA after Union received no  
12 response from Respondent. A true and correct copy of the Notice of Arbitration is  
13 hereto attached as Exhibit G.

14 19. An arbitration hearing was held on December 8, 2011. Respondent  
15 did not appear at the hearing. Consequently, Arbitrator Michael D. Rappaport  
16 issued an arbitration award (“Arbitration Award”) on December 8, 2011, in favor  
17 of Union and against Respondent. A true and correct copy of the Arbitration  
18 Award is attached hereto as Exhibit H.

19 20. The Arbitration Award provides the following relief:

20 “Shadowboxer, LLC a (‘Producer’) and Lee Daniels Entertainment, LTD.  
21 (‘LDE’) are in breach of the CBA. Producer and LDE are hereby ordered to  
22 pay to Screen Actors Guild, Inc. on behalf of affected performers, with joint  
23 and several liability, the residuals due to performers appearing in the Picture,  
24 late payment liquidated damages (“LPLD’s”), pension and health  
25 contributions (“P&H”), and an estimate of employer-side taxes and payroll  
26 house expenses totaling **\$335,757.11** which consists of: Residuals:  
27 \$169,630.22; P&H: \$25,323.03; LPLD’s: \$93,544.08; Taxes/Expenses  
28

1 (17.95%): \$47,239.79; **Grand Total: \$335,737.11.**”

2 21. The monetary portion of the Arbitration Award totals: \$335, 737.11.

3 22. Despite Union’s demand, Respondents have failed and continues to  
4 fail to pay Union the total amount of \$335,737.11 required by the Arbitration  
5 Award, and to otherwise comply with the Arbitration Award.

6 23. Union has received no response from Respondents.

7 24. Subsequently on November 25, 2015, Union attempted to contact  
8 Producer via last known telephone provided to the Union. Producer telephone  
9 number was out of service.

10 25. Union sent a meet and confer letter on November 30, 2015 stating  
11 that Union would proceed to confirm the Arbitration Award as a judgment. A true  
12 and correct copy of the meet and confer letter is attached to Espinosa Decl. as  
13 Exhibit I.

14 26. In addition to confirmation of the Arbitration Award and entry of  
15 judgment in conformity therewith, Union seeks attorney’s fees and costs.

16 27. I have practiced law since 2011 in California, where I was admitted to  
17 the Bar in January of 2011. I am also admitted to practice in the U.S. District  
18 Court for the Central District of California.

19 28. I have practiced in-house with Union since May 2013. In that  
20 capacity, I represent Union and its members in a wide variety of arbitrations and  
21 litigation arising under Union's collective bargaining agreements.

22 29. I have reviewed my activities on behalf of Union in this matter. In  
23 calculating the hours set forth herein, I have considered my time in preparing the  
24 present declaration, and related notice of motion and motion, memorandum of  
25 points and authorities, proposed judgment, notice of interested parties, as well as  
26 correspondence and attempted communications with Respondent and my estimated  
27 travel and court time.

28 30. I have calculated the reasonable market value of my services by

1 taking the prevailing hourly rate of private attorneys whose practices focus on  
2 labor relations law in the entertainment industry and assessing my rate within the  
3 lower to mid-range of that scale. Based upon those rates, a reasonable rate for an  
4 attorney of my background and experience is \$300.00 per hour.

5 31. Fees awarded in this action will not inure to me personally, but will  
6 be paid to Union, a non-profit corporation and certified labor organization.

7 32. The compensation for which Union is entitled for my services is  
8 \$2,400.00, which was computed as follows: 8 hours at \$300.00 per hour.

9 33. The costs incurred in this action total \$400.00 in filing costs.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed at Los Angeles, California, December 8, 2015.  
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14 \_\_\_\_\_ /s/

15 Jessica Espinosa  
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